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October 18, 2004

OCT 19 2004
RECEIVED

Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

Attn: Hon. Vernon Williams

Re: AB-307 (Sub-No. 5X)

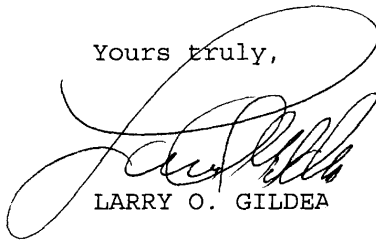
212266

Dear Mr. Williams:

Attached for filing are the original and ten copies of Motions on Behalf of Intermountain Resources LLC.

A Declaration of Christopher C. Meyers is attached as a part of the Motion. Mr. Meyers is in Montrose, Colorado. He has signed the Declaration, but the signature page was sent to my office by facsimile transmission. As soon as the original arrives, I will resubmit his Declaration with the hard copy of the signature page.

Yours truly,



LARRY O. GILDEA

LOG:mt
Enclosures

Copies with enclosures:
Intermountain Resources LLC
Karl Morrell
Thomas Rumpke
Town of Saratoga
Saratoga-Carbon County Impact
Joint Powers Board

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

MOTIONS OF PROTESTANT
INTERMOUNTAIN RESOURCES, LLC

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Public Record

LARRY O. GILDEA
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Phone: (541) 342-1771
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Dated: October 18, 2004.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

MOTIONS OF PROTESTANT
INTERMOUNTAIN RESOURCES, LLC

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Protestant Intermountain Resources, LLC (IMR) moves
the Surface Transportation Board:

1. For an order striking Wyoming and Colorado
Railroad Company, Inc.'s (WYCO) Reply because many
arguments and statements in the brief are not supported
with evidence in this case.

2. Alternatively, and only if IMR's motion to strike
is denied, for an order striking the following statements
from WYCO's Reply because there is no evidence to support
them.

1. "More importantly, not one Protestant offers
to **subsidize** WYCO's future losses on the Line." p. 4.

2. "Intermountain, however, fails to explain
why, if rail service is an essential element of its
operations, it acquired the facility in September
2003, eight months after it closed, without even
inquiring whether rail service were still available,
much less entering into an arrangement with WYCO to

ensure that rail service would be available in the future. Most disconcerting to WYCO is Intermountain's misrepresentations to the Board concerning the discussions between the parties last year and its purported willingness and ability to now enter into a subsidy arrangement." pp. 4-5.

3. "After filing its Protest, Intermountain informed WYCO that the facility will not open on October 15th and that it was not yet prepared to discuss much less sign a take-or-pay contract." p. 5.

4. "Intermountain readily concedes that all inbound movement of logs will be by trucks, yet Intermountain would have the Board believe that the same product, once refined at the mill, is economically incapable of moving 50 miles by truck to a nearby UP transload facility. There are other mills without rail service that are presumably operating profitably. Moreover, one of the outbound commodities is wood chips which, at least in recent years, moved primarily by truck." subnote 1, p. 6.

5. "If Intermountain is serious about retaining rail service, its efforts would be better served by negotiating a private arrangement with WYCO rather than seeking to have the Board deny the abandonment request." p. 7.

6. "Even at this late date, Intermountain demonstrates no urgency or serious desire to enter into meaningful negotiations with WYCO for continued rail service. Intermountain found the time and resources to file a Protest and stir up opposition from the other Protestants but, until last Friday, was not willing to meet with WYCO to negotiate a contract. Intermountain's conduct suggests that either it is still not certain that the mill will reopen or it is simply using the existence of rail service as leverage in negotiating other transportation arrangements." p. 8.

3. For an order receiving into evidence the attached Declaration of Christopher C. Meyers which contradicts the unsupported statements in the Reply.

4. For an order setting an oral hearing in this case.

5. For an order directing WYCO to provide the following discovery to IMR:

a. Financial information showing WYCO's receipts and disbursements in the operation of the Line for the last three (3) years that it was in operation (2000, 2001, and 2002).

b. Records showing the deferred maintenance on the Line.

c. Making Greg Kissell available for deposition at a time and place mutually convenient to the parties.

d. Making a WYCO employee or agent who has firsthand knowledge of the income and expenses of WYCO's operation of the Line available for deposition at a time and place mutually convenient to the parties.

e. Making a WYCO employee or agent who has firsthand knowledge of the deferred maintenance of the Line available for deposition at a time and place mutually convenient to the parties.

IMR is willing to depose WYCO employees and/or agents at a place in Wyoming of WYCO's choice.

6. For an order delaying the date on which the decision in this case is due to enable discovery and an oral hearing before the decision is made.


The Declaration of Christopher C. Meyers is attached to these motions as Exhibit A and by this reference made a part hereof.

Argument. WYCO's Reply contains many statements with no evidentiary base and arguments based upon statements and other information not in the record.

IMR's representative, Christopher C. Meyers, tried to negotiate an agreement with WYCO, but WYCO refused to talk. WYCO and its attorney pretend to be open for negotiations, but their pretenses are not genuine.

The wide discrepancy between Mr. Kissell and WYCO's Reply and the statements of Mr. Meyers need more examination through depositions and discovery. IMR urges the Board to allow these motions.

Date: October 18, 2004.



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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

DECLARATION OF CHRISTOPHER C. MEYERS

I, CHRISTOPHER C. MEYERS, make the following
Declaration in support of the Motions filed on behalf of
Intermountain Resources LLC (IMR).

On August 27, 2004, IMR's attorney reported to me that
Wyoming and Colorado Railroad Company, Inc.'s (WYCO)
counsel urged negotiations between Greg Kissell of WYCO and
a designated representative of IMR. I am the IMR
representative designated to negotiate with Mr. Kissell.

I had two telephone conversations with Mr. Kissell. I
told him that IMR is ready to negotiate an agreement with
WYCO. I asked him for rate information and also what other
terms WYCO would need to sign an agreement with IMR.

Mr. Kissell refused to talk about an agreement or to
negotiate. He told me that WYCO's attorney instructed him
not to release any specific contract information until he

(the attorney) told him to do so. Mr. Kissell said that WYCO's attorney would be filing a major document on September 27, 2004, and that he could not talk to me until after that document was filed and only then if WYCO's attorney authorized discussions or negotiations.

Mr. Kissell also told me that WYCO would not negotiate with IMR unless IMR withdrew its Protest. I told Mr. Kissell several times that IMR wanted to negotiate an agreement, and that IMR needed to have an agreement with WYCO before it could reopen the mill at Saratoga. Mr. Kissell continues to refuse to negotiate.

I have read WYCO's Reply. Several statements in the Reply are untrue. Attached to this Declaration is a copy of the Reply with the untrue statements highlighted. They are:

1. "More importantly, not one Protestant offers to **subsidize** WYCO's future losses on the Line." p. 4.

IMR has always been willing to subsidize WYCO's future losses. I have asked Mr. Kissell what WYCO needs or wants. He refused to talk about it.

2. "Intermountain, however, fails to explain why, if rail service is an essential element of its operations, it acquired the facility in September 2003, eight months after it closed, without even inquiring whether rail service were still available, much less entering into an arrangement with WYCO to ensure that rail service would be available in the future. Most disconcerting to WYCO is Intermountain's

misrepresentations to the Board concerning the discussions between the parties last year and its purported willingness and ability to now enter into a subsidy arrangement." pp. 4-5.

I told Mr. Kissell, before IMR filed its Protest, that IMR would sign an acceptable agreement with WYCO. Mr. Kissell told me that he did not know how much WYCO would require. I made no misrepresentations to the Board. My first Declaration correctly reported the substance of our conversations.

3. "After filing its Protest, Intermountain informed WYCO that the facility will not open on October 15th and that it was not yet prepared to discuss much less sign a take-or-pay contract." p. 5.

I told Mr. Kissell that IMR needed an agreement with WYCO before it could reopen the mill. IMR was and is prepared to sign a take-or-pay contract.

4. "Intermountain readily concedes that all inbound movement of logs will be by trucks, yet Intermountain would have the Board believe that the same product, once refined at the mill, is economically incapable of moving 50 miles by truck to a nearby UP transload facility. There are other mills without rail service that are presumably operating profitably. Moreover, one of the outbound commodities is wood chips which, at least in recent years, moved primarily by truck." subnote 1, p. 6.

I told Mr. Kissell that it is foreseeable that IMR may want to ship logs to the mill from northern Wyoming or Utah by rail. Typically, though, independent loggers deliver logs to the mill in log trucks. Log trucks can

haul logs but not lumber. They are not built to haul anything but logs. The mill has to ship its manufactured product to the buyers. Many towns have local trucking companies or private truckers available to perform this service, but Saratoga does not. There may be other mills that operate profitably without rail service, but there are no other mills in Saratoga, Wyoming. Wood chips are normally shipped by rail. If they are not, however, the quantity of wood chips shipped is low enough that they can be shipped by truck. Moreover, wood chips can be stored almost indefinitely and shipped when transportation is available. Lumber, however, must be shipped promptly to fill pending orders.

5. "If Intermountain is serious about retaining rail service, its efforts would be better served by negotiating a private arrangement with WYCO rather than seeking to have the Board deny the abandonment request." p. 7.

WYCO's representatives refuse to talk about an agreement -- private or otherwise. IMR wants an agreement and will try to work one out if WYCO will authorize its representative to do so.

6. "Even at this late date, Intermountain demonstrates no urgency or serious desire to enter into meaningful negotiations with WYCO for continued rail service. Intermountain found the time and resources to file a Protest and stir up opposition from the other Protestants but, until last Friday, was not willing to meet with WYCO to negotiate a contract.

Intermountain's conduct suggests that either it is still not certain that the mill will reopen or it is simply using the existence of rail service as leverage in negotiating other transportation arrangements."
p. 8.

I have urged Mr. Kissell to discuss pricing. I have asked him what WYCO wants. In our last conversation, Mr. Kissell stated that he had not put all of the cost figures together and hence they were not available to discuss with me at this time. Upon compilation of all of the cost calculations and pricing, he would need consent from his attorney before he could enter into negotiations with IMR and that he would call me when that permission was available.

I, CHRISTOPHER C. MEYERS, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Declaration.

Date: October 18, 2004.



CHRISTOPHER C. MEYERS

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

REPLY TO PROTESTS

Karl Morell
Of Counsel
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(202) 638-3307

Attorney for:
Wyoming and Colorado Railroad
Company, Inc.

Dated: September 27, 2004

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

REPLY TO PROTESTS

Wyoming and Colorado Railroad Company, Inc. ("WYCO") hereby responds to the Protests filed by Intermountain Resources, LLC ("Intermountain"), on August 31, 2004; the Town of Saratoga ("Saratoga"), on September 13, 2004; the Saratoga-Carbon County Impact Joint Powers Board ("JPB") on September 13, 2004; and the State of Wyoming and Carbon County, Wyoming ("Wyoming"), jointly on September 16, 2004 (collectively "Protestants").

On July 23, 2004, WYCO filed with the Surface Transportation Board ("Board") a petition ("Petition") seeking an exemption to abandon a 23.71-mile line of railroad located between Milepost 0.57, near Walcott, and Milepost 24.28, at Saratoga, in Carbon County, Wyoming (the "Line"). Notice of the proposed abandonment was published in the Federal Register on August 12, 2004.

In its Petition, WYCO pointed out that, since it acquired the Line in 1987, the traffic volumes were never adequate to fully compensate WYCO for the costs of operating and maintaining the Line. WYCO went on to explain that it nevertheless continued to operate the Line because the sole shipper on the Line had agreed to enter into take-or-pay contracts that rendered WYCO's operations over the Line "marginally profitable".

In January 2003, the only shipper on the Line closed its mill. In June 2003, five months after the Line became dormant, WYCO commenced the abandonment process by sending out consultation letters for the Environmental and Historic Reports. A few months thereafter WYCO suspended its abandonment efforts after learning that another company may be interested in purchasing and reopening the mill. WYCO, on its own initiative, held a number of discussions with the new owner to determine if the Line could be reopened on a profitable basis. WYCO was informed that the new owner would not have the traffic volumes necessary to reopen the Line and that the new owner was unwilling to enter into take-or-pay contracts that would guarantee profitable operations. Consequently, after months of discussions, WYCO was left with no option other than to restart the abandonment process.

Nearly two years after all traffic on the Line stopped moving, Protestants come before the Board, at the eleventh hour, and ask that the abandonment request be denied. Not one Protestant, however, denies that WYCO's operations over the Line for 16 years were only **marginally profitable**, and then so only because of the take-or-pay contracts. Not one Protestant refutes the fact that **no traffic** has moved over the Line in nearly two years. Not one Protestant offers to compensate WYCO for the **significant opportunity costs** foregone over the years, must less the financial losses incurred during the last two years.

Although they acknowledge that the line is unprofitable, not one Protestant is willing to **guarantee** that a single carload of freight will move over the Line in the future. More importantly, not one Protestant offers to **subsidize** WYCO's future losses on the Line.

Intermountain claims that rail service is necessary for its outbound shipments of product from its Saratoga facility. Intermountain, however, fails to explain why, if rail service is an essential element of its operations, it acquired the facility in September 2003, eight months after

it closed, without even inquiring whether rail service were still available, much less entering into an arrangement with WYCO to ensure that rail service would be available in the future. Most disconcerting to WYCO is Intermountain's misrepresentations to the Board concerning the discussions between the parties last year and its purported willingness and ability to now enter into a subsidy arrangement.

Since receiving a phone call from Intermountain's attorney on August 27, 2004 expressing an interest in rail service, WYCO has attempted to contact Mr. Meyers on a number of occasions to discuss the economic feasibility of reopening and operating the Line. In its Protest, Intermountain represents to the Board that it will be opening the Saratoga facility on October 15, 2004, and that it was "willing and able to enter into an agreement with WYCO that would enable WYCO to continue operating the Line on a profitable basis." Protest at 3-4. After filing its Protest, Intermountain informed WYCO that the facility will not open on October 15th and that it was not yet prepared to discuss much less sign a take-or-pay contract. Intermountain's conduct, unlike its rhetoric before the Board, hardly exemplifies a rail dependent shipper.

The remaining Protestants understandably support Intermountain's efforts to reopen the mill at Saratoga because of the jobs that would be created. They offer, however, little else that would give WYCO, or the Board, comfort that the Line can be reopened and profitably operated for any meaningful time. These governmental entities ship no traffic by rail and offer no guarantees or subsidies from which the Board could find that the Line has a reasonable chance of becoming profitable on a subsidized or unsubsidized basis.

Saratoga and JPB simply echo Intermountain's unsupported allegation that rail service is essential for the operation of the mill.¹ These two governmental entities argue that the mill cannot operate profitably without local rail service, but are indifferent as to the profitability of the railroad.

Wyoming also supports the reopening of the mill because of the economic benefits that would accrue to the local community. Notwithstanding the well-intentioned nature of its Protest, Wyoming's opposition to the abandonment is predicated on faulty assumptions and misinterpretations of fact. Wyoming presumes that WYCO's operations over the Line will be profitable once the mill is reopened. This presumption appears to be predicated on misinterpretations of the record in this proceeding. In its Petition, WYCO stated that the take-or-pay contracts "permitted WYCO to operate the Line on a marginally profitable basis." Wyoming conveniently ignores the word "marginally" and fails to recognize that, while the operating costs were being covered, the take-or-pay contracts were not providing sufficient funds to enable WYCO to perform normalized maintenance. Wyoming also does not take into consideration the fact that the Line has been out of service for nearly two years, has suffered years of deferred maintenance and, consequently, will require substantial start-up costs. Moreover, Wyoming and the other Protestants ignore the vast opportunity costs WYCO has foregone over the years.

¹ WYCO maintains that the allegation is not only unsupported but unsupportable. Intermountain readily concedes that all inbound movements of logs will be by trucks, yet Intermountain would have the Board believe that same product, once refined at the mill, is economically incapable of moving 50 miles by truck to a nearby UP transload facility. There are other mills without rail service that are presumably operating profitably. Moreover, one of the outbound commodities is wood chips which, at least in recent years, move primarily by truck.

Wyoming also seems to suggest that, as long as Intermountain agrees to enter into a take-or-pay contract for a minimum of 75 cars a month, WYCO's operations will be profitable.² Wyoming, however, fails to grasp the most important aspect of a take-or-pay contract: the amount per car that Intermountain is willing to commit to paying. Wyoming also takes at face value Intermountain's statement to the Board that it "is willing to enter into the same sort of arrangement with WYCO." Declaration of Meyers at 3. Intermountain has owned the facility at Saratoga for one year and has yet to meet with WYCO, much less offer a firm commitment to fully compensate WYCO for the costs associated with reopening, operating and properly maintaining the Line.

In its zeal to promote local economic development, Wyoming takes great license with the facts in this proceeding. For example, it argues that this is not a case where the abandonment would be "inconvenient" to the shipper. Protest at 7. Wyoming is correct, of course, but only because there are no active rail shippers on the Line. The mill has been closed for nearly two years and remains closed today. Wyoming claims that Intermountain is "ready, willing, and able to enter into contracts identical to earlier contracts which WYCO admits made [the Line] profitable." Protest at 7. As already explained, the previous take-or-pay contracts did not fully compensate WYCO and, in any event, Intermountain has never stated that it is willing or able to enter into the "identical" contracts, only that it is "willing to enter into the same sort of arrangements...." Declaration of Meyers at 3. If Intermountain is serious about retaining rail service, its efforts would be better served by negotiating a private arrangement with WYCO rather than seeking to have the Board deny the abandonment request.

² For example, Wyoming makes the astounding statement "that even WYCO admits that the Line is not a losing proposition when 75 freight cars per month utilize the Line." Protest at 8. WYCO, of course, made no such statement.

Wyoming also claims that Intermountain “has submitted substantial evidence that alternative transportation options are not available for its products.” Protest at 7. Wyoming conveniently ignores the fact that Intermountain has no product to ship from Saratoga. Moreover, Intermountain simply asserts that its outbound products can’t move by trucks even though other mills ship by truck. Its protest is devoid of any analysis comparing the cost of shipping by truck vis-a-vis rail.

Finally, Wyoming disingenuously argues that “closure of the sawmill due to lack of rail service will cause Carbon County to lose dozens of ... jobs” and that “the loss of the sawmill will have a dramatic impact on local economic development.” Protest at 8, emphasis added. The mill has been closed for nearly two years and the jobs are long gone. The mill did not close because of a lack of rail service. In fact, WYCO subsidized the mill for years through less than adequate returns on its investment and deferred maintenance. After the mill closed, WYCO patiently sat on its significant investment for over a year, and only after being told that its services would not be needed if the mill were ever to open again, proceeded to seek abandonment authority. Within the last two years, the local and state governmental entities offered WYCO no assistance, subsidies or even condolences and Intermountain demonstrated an indifference to rail service.

Even at this late date, Intermountain demonstrates no urgency or serious desire to enter into meaningful negotiations with WYCO for continued rail service. Intermountain found the time and resources to file a Protest and stir up opposition from the other Protestants but, until last Friday, was not willing to meet with WYCO to negotiate a contract. Intermountain’s conduct suggests that either it is still not certain that the mill will reopen or it is simply using the existence of rail service as leverage in negotiating other transportation arrangements.

Protestants' sole basis for requesting the denial of the abandonment is Intermountain's projection of future outbound traffic that it expects to move over the Line. The Board and its predecessor, however, have consistently rejected speculation about future traffic as a sound basis for denying the abandonment of an otherwise unprofitable rail line. *See, e.g.,* STB Docket No. AB-433X, *Idaho Northern & Pacific Railroad Company – Abandonment Exemption – In Wallowa and Union Counties, OR* (not printed), served April 16, 1997 (“*Idaho Northern*”);³ STB Docket No. AB-6 (Sub-No. 370X), *Burlington Northern Railroad Company – Abandonment Exemption – Between Mesa and Basin City, Franklin County, WA* (not printed), served January 27, 1997; Docket No. AB-290 (Sub-No. 122X), *Norfolk and Western Railway Company – Abandonment Exemption – In Randolph, Macon, Adair, and Schuyler Counties, MO, and Davis, Appanoose, and Monroe Counties, IA* (not printed), served September 17, 1993; Docket No. AB-55 (Sub-No. 413X), *CSX Transportation, Inc. – Abandonment Exemption – In Webster County* (not printed), served May 29, 1992. Also, a shipper, such as Intermountain, “may not insist upon the maintenance of a burdensome line solely for its own benefit.” *Busboom Grain Company, Inc. v. ICC*, 856 F.2d 790, 795 (7th Cir. 1988).

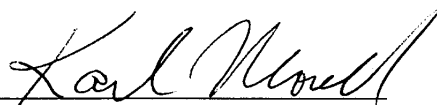
Moreover, Intermountain concedes that its projected traffic volumes are insufficient to render the Line profitable. It nevertheless urges the Board to deny the abandonment solely on its vague assertion that it will enter into an arrangement with WYCO that will allow WYCO to operate the Line on a profitable basis. The Board, however, is powerless to condition a denial of the abandonment on Intermountain fulfilling its representation to the Board. The Board,

³ In *Idaho Northern*, the Board granted the abandonment even though a lumber mill had projected a total of 2,102 outbound movements of lumber and wood chips, the identical products Intermountain claims it will produce at Saratoga. In granting the abandonment, the Board found the traffic projections speculative but also noted that the mill had been utilizing truck service to deliver the finished products.

however, can reach the same result by granting the abandonment. Once the abandonment is granted, Protestants can make good on their representations to the Board and invoke the provisions of 49 U.S.C. § 10904 by either subsidizing WYCO's continued operations or acquiring the Line for net liquidation value ("NLV"). In either event, WYCO's financial interests would be protected. At the same time, Protestants would be able to achieve their stated objectives albeit through deeds and not simply through words.

In summary, WYCO respectfully urges the Board to grant the requested exemption and authorize the abandonment of the Line. No one contends that the Line is profitable or will become profitable without a subsidy should the mill reopen. WYCO stands ready to meet with Intermountain and discuss a subsidy arrangement. In the meantime, the Board should continue to process the Petition. If a private arrangement is reached, rail service will continue.⁴ If no arrangement is reached, Protestants have the statutory right to force WYCO to continue subsidized operations for a year or to acquire the Line at NLV.

Respectfully submitted,



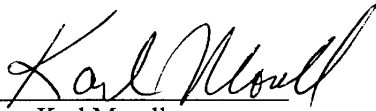
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(202) 638-3307

Dated: September 27, 2004

⁴ WYCO, at this time, does not intend to withdraw its Petition even if an agreement is reached. WYCO does not want to be placed in the position of having to go through the expense of re-filing its Petition should the situation once again change in the near future.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2004, I have caused a copy of the foregoing Reply To Protests to be served on all parties of record in this proceeding.


Karl Morell

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-307 (SUB-NO. 5X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.
--ABANDONMENT EXEMPTION--
IN CARBON COUNTY, WYOMING

CERTIFICATE OF SERVICE

Under 49 C.F.R. 1152.60(d), the undersigned hereby certifies that the Motions of Protestant Intermountain Resources, LLC to the Wyoming and Colorado Railroad Company, Inc. Reply to Protests was mailed via FedEx overnight delivery on October 18, 2004, to the following parties:


Karl Morell, Of Counsel
Ball Janik LLP
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Washington, DC 20005

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201 S.E. River Street
Saratoga, WY 82331

Saratoga-Carbon County Impact
Joint Powers Board
c/o Mike Glode
119 E. Bridge Street
Saratoga, WY 82331

Date: October 18, 2004.



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